

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-12-024

DANIEL PARKS,

Plaintiff

ORDER ON PLAINTIFF'S
RULE 60(B) MOTION

v.

ANDREW FRANCOEUR,

Defendant

STATE OF MAINE
Cumberland County Clerk's Office

FEB 26 2015

RECEIVED

Before the court is plaintiff's Rule 60(b) motion. Plaintiff alleges newly acquired evidence suggests fraudulent testimony was presented by defendant and witness Paul Bois. For the following reasons, the motion is denied.

The proposed testimony of Mr. Bois could have been discovered before trial by inquiring whom plaintiff intended to call as witnesses. See In re Estate of Fournier, 2009 ME 17, ¶ 12, 996 A.2d 885. If the first notice that Mr. Bois would testify came with the defendant's witness list, counsel could have approached the court for an opportunity to depose Mr. Bois after the discovery deadline of October 9, 2012. Defendant's witness list was filed December 10, 2012. Trial was held August 27, 2013.

Most importantly, the proposed evidence would not change the result upon a new trial. See id. This was a jury-waived trial. The court devoted one sentence to Mr. Bois's testimony in the seven-page judgment. The court devoted three pages in the Findings section of the judgment to plaintiff's testimony. The court devoted two pages in the Conclusions section of the judgment to the problems with plaintiff's ability to prove his case. The court specifically stated, "plaintiff's testimony about the events of June 5, 2010 and thereafter was not

credible, was exaggerated, and was, at times, theatrical.” (1/9/14 Judgment at 7.) The court noted that the testimony of plaintiff’s witness, Mr. Fickett was given little weight. (Id.)

The plaintiff had the burden of proof. If defendant had moved for judgment as a matter of law at the conclusion of plaintiff’s case, the motion would have been granted. M.R. Civ. P. 50(d).

The entry is

Plaintiff’s Rule 60(b) Motion is DENIED.

Dated: February 26, 2015



Nancy Mills
Justice, Superior Court

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